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OFFICE OF PETITIONS

In re Application of :
Johnson et al. :
Application No. 10/622,677 : DECISION ON PETITION
Filed: 18 July, 2003 :
Atty Docket No. 3971-13-CON :

This is a decision on the petition filed on 29 April, 2005, under 37 CFR 1.137(b),¹ to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned on 7 April, 2005, for failure to file a proper reply to the final Office action mailed on 6 October, 2004, which set a three (3) month shortened statutory period for reply. On 31 March, 2005, petitioners filed a three (3) month extension of time and an amendment after final

¹ Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition filed under the provisions of 37 CFR 1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In a nonprovisional utility or plant application filed on or after June 8, 1995, and abandoned for failure to prosecute, the required reply may also be met by the filing of a request for continuing examination in compliance with § 1.114. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof.

(2) the petition fee as set forth in 37 CFR 1.17(m);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c)).

rejection. The amendment did not place the case in condition for allowance, however, and an Advisory Action was mailed on 26 April, 2005. Notice of Abandonment was mailed on 16 May, 2005.

Petitioners have filed a Request for Continued Examination (RCE) and have indicated that the previously filed amendment is the submission required under 37 CFR 1.114.

The statement contained in the instant petition does not set forth that the entire delay from the due date of the required reply to the date of the filing of a grantable petition was unintentional as required by 37 CFR 1.137(b)(3). However, the statement contained in the instant petition is being so construed. Petitioner **must** notify the Office if this is not a correct interpretation.

This application is being referred to Technology Center Art Unit 3749 for further processing.

Telephone inquiries concerning this matter may be directed to the undersigned at (571)272-3231.



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